

117159

DECISION



20388

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202522

DATE: December 28, 1981

MATTER OF: National General Supply Inc.

DIGEST:

1. Protester was not required to file its protest with GAO within 10 working days after it received oral notification of cancellation of solicitation since record does not indicate that this oral notification provided the protester with sufficient information as to the reasons for the cancellation so as to give rise to any possible basis for protest.
2. GAO will not question contracting agency's decision to cancel solicitation where the agency had a reasonable basis for its decision based, in part, on its apparent agreement with our Office's audit findings which criticized solicitation format involving pricing of thousands of items.
3. Money claim for breach of contract involving award of requirements covered by contract allegedly awarded to claimant is for consideration under Contract Disputes Act of 1978 and not by our Office.

National General Supply Inc. (NGS) protests the cancellation of request for proposals (RFP) No. F39601-81-R-0010, issued by the Contracting Division, Ellsworth Air Force Base (Air Force), South Dakota.

The RFP solicited proposals for the stocking and operation of a contractor-operated civil engineering supply store (COCESS) at Ellsworth Air Force Base. Three firms responded to the RFP, but only two, NGS and Ellsworth Northwest Pipe Fittings, Inc., the incumbent contractor, submitted best and final offers. After evaluating the best and final offers, the Air Force determined NGS to be the low offeror. However, the Air Force--Headquarters, Strategic Air Command (SAC)--determined that the RFP's Material Requirements List (MRL), which contained almost 5,000 different items, "did not accurately reflect the Air Force's requirements." The RFP therefore was canceled and the incumbent's contract extended for 6 months while the Air Force drafted a new format for COCESS procurements.

We find no basis to question the agency's action.

In its report to our Office, the Air Force argues that NGS's protest was untimely. According to the Air Force, NGS was informed by telephone on February 20, 1981, that the solicitation had been canceled. The Air Force maintains that NGS had 10 working days from that telephone notification to file a protest with our Office. In the Air Force's opinion, then, NGS's protest, which our Office received on March 16, 1981, is untimely.

NGS, on the other hand, argues that it had 10 working days after the first workday (March 2, 1981) in which it was in possession of the "official" Air Force notification of the cancellation. According to NGS, the official notice was contained in an Air Force letter dated February 24, 1981. In light of this, NGS maintains that its protest was timely filed.

Under our Bid Protest Procedures, for a protest to be considered timely filed, it must be received in our Office not later than 10 working days "after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 21.2(b)(2) (1981).

We have recognized that oral notification of the basis for protest is sufficient to start the 10-day period running and that a protester may not delay filing its protest until after receipt of a written notification which merely reiterates the basis for protest. Service Enterprises, Inc., B-190410, April 4, 1978, 78-1 CPD 266. However, the agency's oral notification must contain sufficient information so as to reasonably convey the basis for protest. See Services Enterprises, Inc., supra. Mere oral notification that a solicitation has been canceled, without more, is not sufficient to reasonably convey information as to a possible basis of protest against a cancellation.

Here, the record does not indicate that the Air Force's telephone notification of February 20, 1981, provided NGS with more than the bare notice that the solicitation had been canceled. Indeed, there is no indication in the record that the Air Force's February 24 letter to NGS reasonably conveyed the reasons for the cancellation. We have held that where there is doubt as to when a protester knew the basis for protest, that doubt is resolved in favor of the protester. Dictaphone Corporation, B-196521, September 17, 1980, 80-2 CPD 201. Accordingly, and since there is no indication that NGS did not diligently pursue this matter, we find that NGS's protest of March 16, 1981, in response to the Army's written notification of cancellation, was timely filed. It therefore will be considered on the merits.

NGS argues that the Air Force had no basis to cancel the RFP. In NGS's opinion, the MLR was prepared so recently it "should have accurately reflected" the Government's requirements.

Contracting officers have broad discretion in deciding whether to cancel a solicitation and our Office will not overturn such a decision unless there is an abuse of that discretion. Nortec Corporation, B-198232, September 19, 1980, 80-2 CPD 212.

The Air Force states that one of the reasons it canceled the RFP is that the MRL, which was 2 years old, did not accurately reflect its true requirements.

SAC also took into account our Office's preliminary findings concerning the Air Force's COCESS program. These findings were ultimately set forth in a report of our Office to the Congress. The report ("Military Contractor-Operated Stores' Contracts Are Unmanageable And Vulnerable To Abuse"-MASAD-81-27, July 8, 1981) pointed out some significant deficiencies in the program, as stated on page 7 of our report:

"The store contract was intended to be a cost-effective means of obtaining automotive and maintenance items from the widespread, commercial distribution system. From the beginning, the Air Force was faced with the problem of developing a contract that would

--fix with certainty the price of thousands of potential store sales before the items were actually needed,

--be awarded to a responsible contractor in a free and open competition, and

--require minimum administration.

"The Air Force has devoted much effort to this task for several years but has been unable to produce a contract that assures fair and reasonable prices without an extensive and costly administrative burden. The basic problem--prepricing thousands of items and assuring timely delivery according to contract terms--has not been solved.

"The contracts, we believe, are highly vulnerable to opportunistic bidding strategies which gamble on

--the contract pricing provisions,

--the accuracy of the Government's estimated requirements,

--the local interpretation of contract terms, or

--the likelihood of the Government's enforcing contract provisions.

"Bidders have used devices such as special price lists * * * to enhance their chances of winning contract awards, and have used deceptive practices in adjusting unit prices in COCESS contracts * * *."

Our report also recommended: "As each COCESS contract expires, it should not be renewed. Instead, the [Air Force] should explore other means of buying * * * supplies."

In view of its apparent agreement with our audit findings and its own conclusion regarding the MRL, SAC decided not to approve any new COCESS contracts, but instead to develop a new format that will eliminate the need to negotiate 5,000 or more line items. While this new format is being developed, SAC has ordered its

"Bases not to issue any new COCESS solicitations, cancel any solicitations that had been issued, and either extend current COCESS contracts or bring the service in-house on an interim basis."

As indicated above, it is not a function of our Office to substitute our judgment for that of the contracting agency, but rather we only determine whether the decision to cancel had a reasonable basis. Management Services Incorporated, B-197413, June 6, 1980, 80-1 CPD 394. From the facts presented, it is clear that the decision to cancel was not reached arbitrarily, but was based on specific reasons--including our own Office's findings--which permitted cancellation. We therefore have no basis to question the cancellation of the RFP.

Next, NGS questions the 6-month extension of the incumbent's contract. NGS contends that the Air Force should also have entered into negotiations with it for the requirements involved in the extension period since it had already "started mobilization" for the requirements involved. The Air Force's contracting officer, however, insists that there was no other method of providing "continuous support" for the services involved other than extending the incumbent's contract.

Since we cannot question the view that the incumbent contractor was in a better position of minimizing the risk of service interruption, we cannot question the extension of the incumbent's contract.

Protest denied.

Finally, NGS has made a claim--based on the submission of two invoices (dated February 2 and February 23, 1981), totaling \$5,004.12--for breach of a contract which it alleges the Air Force entered into with it in January 1981. Specifically, NGS notes that the Air Force permitted NGS to sign (on January 20, 1981), Standard Form (SF) 26, Award/Contract, on which was contained a contract number, an effective award date (March 1, 1981), and a description of the service to be furnished. NGS signed SF 26 and returned it to the Air Force's contracting officer, who signed the form on January 30, 1981. The document was then forwarded to SAC Headquarters, which, as noted above, directed the cancellation of the RFP rather than allowing performance under the signed SF 26.

Under these facts, NGS claims its alleged contract was thereafter breached when the Air Force extended the incumbent's contract for service which it claims was covered under its alleged contract.

NGS's claim, involving breach of an alleged post-March 1, 1979, contract, is required to be processed under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (Supp. III, 1979), and may not be

considered by our Office, See Arm-Ben Corporation,
B-204930, October 19, 1981, 81-2 CPD 318. As stated
in section 6(a) of the act;

"All claims by a contractor against
the Government relating to a contract
shall be in writing and shall be sub-
mitted to the contracting officer for
a decision."

Thus, NGS's claim is dismissed.

Harry R. Van Cleave
For the Comptroller General
of the United States